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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 51 In Bankruptcy

IN THE MATTER OF JAMES M. WRIGHT, DEBTOR.

JAMES M. WRIGHT,
Petitioner (Appellant),

vs.

THE UNION CENTRAL LIFE INSURANCE COMPANY, WILLIAM D. REMMELL, TRUSTEE,
Respondents (Appellees).

BRIEF OF APPELLEE-RESPONDENT, THE UNION CENTRAL LIFE INSURANCE COMPANY.

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To the Honorable Charles Evans Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Statement of Record.

In the brief filed by Appellee-Respondent in opposition to the Petition for Certiorari herein, we outlined the procedure had since this Court reversed the judgments of the United States District Court for the Northern District of Indiana and the United States Circuit Court of Appeals for the Seventh Circuit on the previous appeal (304 U. S. 502, 82 L. Ed. 1490).

As stated in that brief, said reversal affected only the 200 acre farm involved herein. The primary basis of the decision was that Section 75 (s) of the Bankruptcy Act, as amended August 28, 1935, was constitutional and enforcible and that Debtor's petition thereunder, having been filed prior to the expiration of the State period of redemption from the foreclosure sale, the Bankruptcy Court acquired exclusive jurisdiction of the property and it was necessary that same be administered there.

Consequent to said holding, Respondent went back to the District Court and sought administration of the property in that Court. It filed a very complete petition detailing the proceedings previously had, including the facts of Debtor's default under the Act and the orders of Court entered thereunder. It prayed that the property be dismissed from the proceeding under Section 75 (s) or that, in the alternative, the farm be sold in the Bankruptcy Court as provided in the Act, Subsection (s) (par. 3) (Tr. 21-24).

After his motion to dismiss this petition was denied, Debtor filed an answer thereto (Tr. 29-41). To this answer Debtor later added an amendment (Tr. 45-49) and on the day of the hearing made a further amendment (Tr. 50-53). In the original answer and in the first amendment thereto, Debtor advanced, in substance, the contentions upon which he relies here. In the last amendment, he urged that the issues presented by Respondent had been adjudicated by this Court on the first appeal and that, on the theory of *res adjudicata*, the issues herein were determined by that decision.

Debtor also filed a cross-petition praying for an appraisement of the property and for an order allowing him to redeem same at the appraised value, that the land be turned over to him on that basis, free and clear of the mortgage lien and that he be discharged from any and all liability

by way of a deficiency judgment (Tr. 41-43). To this cross-petition Respondent duly filed its answer (Tr. 44).

Upon the issues thus made, a hearing in open Court was had before the District Judge. Records were introduced in evidence and testimony of witnesses, including the Debtor, Conciliation Commissioner, the Court's Trustee, and others, was freely heard. Debtor placed the then value of the farm at $30.00 per acre (Tr. 134) or a total of $6,000 (Tr. 144). In this he was supported by other witnesses and this valuation was not questioned by Respondent.

Evidence was also heard as to the long continued occupancy and use of the property by Debtor, his retention of all the income therefrom, his failure to pay taxes, the disrepair of the property, the fixing of rental by the Court through its Commissioner, Debtor's failure to comply therewith and his open defiance of the Court with respect to same. His limited income was demonstrated as an element of the obvious hopelessness of his financial rehabilitation after the expiration of more than three years and the fact that at no time, since the inception of his proceeding in 1935 had Debtor offered or attempted any proposition of composition or extension.

Debtor claimed that at the first meeting of creditors, December 12, 1934, (under original sub-section (s) he had offered Respondent $8500.00 and that same was refused. This testimony was denied on the face of the Conciliation Commissioner's Report (Tr. 1-2), from which it appeared that at that time "debtor had no tangible offer to make to his creditors". The fact of any then offer was also denied by the testimony of the Conciliation Commissioner (Tr. 90) and counsel for Respondent (Tr. 108).

At the conclusion of the hearing on the issues made by the pleadings above mentioned, the District Judge disposed of Respondent's petition and the cross-petition filed by Debtor and in so doing made certain Findings of Fact and

noted his Conclusions of Law. As a matter of convenience to this Court, we repeat the same here, as they appear in the Transcript (Tr. 54-58).

"FINDINGS OF FACT.

1. That petitioner owned and held a first mortgage dated October 1, 1925, in the principal amount of $9000.00 upon the property described in its petition herein; that by decree entered May 27, 1935, in the Circuit Court of Adams County, Indiana, said property was ordered sold to satisfy the indebtedness to petitioner secured by said property and for which a personal judgment was therein entered against debtor; that a sale of said property was had on July 20, 1935, and a Sheriff's certificate of sale was issued to petitioner; that, there being no redemption from said sale, a Sheriff's deed for said property was issued to petitioner on July 26, 1936.

2. Debtor's amended petition under Section 75 (s) of the Bankruptcy Act, as amended August 28, 1935, has been pending since it was filed herein on October 11, 1935.

3. Debtor has not, at any time, made an offer of composition or extension herein, as provided by said Bankruptcy Act, as amended.

4. On or about October 30, 1935, Carman Alexander, Trustee herein, entered into a lease with debtor whereby the latter was permitted to remain in possession of said property upon condition that two-fifths of all crops harvested thereon be paid and delivered to said Trustee or his nominee.

5. In December, 1936, the Trustee herein demanded the share of crops due under the terms of said lease theretofore entered into with debtor but that debtor refused to turn them over at that or at any time unless the law Section 75 (s), as amended August 28, 1935, was held valid.

6. In 1937 no crops were delivered to the Trustee.

7. The total present indebtedness of debtor to petitioner secured by said mortgage amounts to $15,903.68.

8. No part of the principal amount of said indebtedness has been repaid by debtor since said loan was made October 1, 1925.

9. No taxes assessed against said property for any year since 1929 have been paid by debtor.

10. No interest on the indebtedness secured by said property for any year since 1930, has been paid by debtor.

11. The buildings on said property are in a bad state of repair.

12. The amount of $7000.00 alleged in debtor's answer to the petition herein to have been expended by debtor to improve said property, was in fact thus expended by him twelve or fifteen years ago.

13. That taxes and insurance on said property since 1929 have been paid by petitioner, The Union Central Life Insurance Company.

14. The value of said property is $6000.00.

15. Said property is farmed by debtor, his son and son-in-law and they all live thereon.

16. Neither debtor, his son nor son-in-law has any income other than that realized from farming said property.

17. The total income from said property in its best year (1936) was slightly in excess of $2000. and in its worst year (1937) was approximately $200.

18. Debtor admits that he could not refinance said property at an appraised value thereof in excess of $6000., and there is no evidence of his ability to effect said refinancing at that amount.

19. The usual basis of loans made by loaning companies is one-half of the value at which they appraise the property upon which the loan is to be made.

20. In 1934, petitioner offered to accept $8000. in full of the indebtedness secured by said real estate and has never refused to accept $8000. or $8500. therefor.

21. Except for a portion of the 1936 crops delivered to the Trustee herein, debtor has sold and retained the entire proceeds of all crops harvested on said land since said loan was made and has paid nothing therefrom for taxes, interest or insurance since 1930.

22. Debtor's income is grossly insufficient to enable him to reduce or liquidate in any substantial degree his outstanding liabilities or to pay current interest thereon, current taxes against said property and insurance on the buildings located thereon.

23. There is no evidence herein upon which may be based a reasonable hope or expectation of debtor's financial rehabilitation.

24. There is no evidence herein of compliance by debtor with the requirements of said Section 75 (s).

25. Debtor has failed and refused to obey the orders of this court in the matter of making payments semi-annually.

26. In and by its petition herein, petitioner, as a creditor secured by and having a lien on the property described in said petition, has made written request for a public sale of said property.

CONCLUSIONS OF LAW.

Upon the foregoing findings of fact, the Court concludes the law to be as follows:

1. The law is with Petitioner.

2. Petitioner's request for a public sale of said property should be and is granted."

At this point we take the liberty of suggesting that the documents appearing in the printed Transcript of Record, from page 1 to page 17 are not pertinent to the present review except as they were offered in evidence herein. They all antedated and were involved in the former appeal concerning this property (*Wright* v. *Union Central Life Ins. Co.*, 304 U. S. 502, 58 S. Ct. 1025, 82 L. Ed. 1490).

The present case is pending on certiorari granted to review the order of sale of the District Court dated February 11, 1939 and affirmed by the United States Circuit Court of Appeals in *Wright* v. *Union Central Life Insurance Co.*, 108 F. (2d) 361. The latter opinion is set out in full in the printed Transcript of Record (Tr. 153-157).

Summary of Issues Involved.

There are *no disputed questions of fact* presented by the review granted herein. Propositions advanced by Appellant-Petitioner may be summarized as follows; each is controverted by Respondent and will be dealt with in the Argument which follows:

Appellant contends:

1. That Debtor had an *absolute right* to redeem his farm property at the present value—fixed by appraisal or by evidence heard in open court.

2. That this was the intent of Congress and the purpose of the Act and the interpretation thereof must be controlled thereby.

3. That in this instance, the Debtor's right to redeem at the determined present value of the land was defeated by ordering a public sale at which the secured creditor—or anyone else—could bid an amount higher than said value.

4. That the requirement of a sale on demand of the secured creditor defeats the intent of Congress, nullifies the statutory provisions preceding it and should be eliminated from the statute by judicial interpretation.

5. That the Court's sole reason for ordering a sale here was the written demand of the secured creditor.

6. That, while admitting that the Court followed the statute as to fixing the property value, the Court erred in not entering an order awarding the property (absolutely) to the Debtor upon payment of said value, without recourse to sale.

   (a) That no period of redemption could begin to run until the suggested entry of the last named order, such period being elastic.

7. That in ordering a public sale, the District Court conflicted with the opinion of this Court in *Borchard* v. *California Bank, et al.* (.... U. S. ..... 84 L. Ed. 867) decided May 20, 1940, and other decisions.

8. That this Court has a right to declare that

"the language of Congress is not the law. It is void."

(a) Assuming that the intent of Congress does not appear from provisions purposely included in the Act.

9. The primary purpose of the Act must control over provisions deliberately included by Congress to meet constitutional defects in the previous statute.

10. That by the Act of March 4, 1938 (11 U. S. C. A. 203 (s)), Debtor's moratorium was extended to March 4, 1940, and thereafter was further extended to March 4, 1944.

ARGUMENT.

In the foregoing Summary, we have not attempted to meet Appellant's points, as stated, but take them up in the following Argument.

In the first place, we desire to direct this Court's attention to the cases of *Lowman* v. *Federal Land Bank*, No. 785 and *Moon* v. *Union Central Life Insurance Co.*, No. 854, both at the October Term, 1939. In each a Petition for Certiorari was denied, as of April 1, 1940 and April 29, 1940, respectively. The Respondent herein was also respondent in the last mentioned case and was in close contact with the Lowman petition. With the record and briefs of the Moon case before us and with a thorough knowledge of the same in the Lowman matter, we have experienced difficulty in distinguishing between the questions there involved and those upon which certiorari was granted in the instant case.

When Respondent returned to the District Court, invoked administration of the property therein it endeavored to observe and be governed exclusively and to follow strictly the terms of the Act and the decisions of this Court with regard to same. If it failed, or if the District Court departed from the ways of the statute, we are at a complete loss to identify the failure or departure which resulted in the present certiorari.

In his Supplemental Brief, Appellant-Petitioner assumes *first*, that the intentional provision for a sale at the request of the secured creditor defeats the primary purpose and intent of Congress in this legislation and *second*, that this Court is empowered to and should declare the sale provision void, giving effect, nevertheless, to the balance of paragraph (3) of sub-section (s).

In his Supplemental Brief (p. 11) Appellant further contends that under Paragraph 3 of subsection (s), after ascertaining the present value of the land, the Court is *required* to allow Debtor to redeem at said valuation and to turn the property over free of the mortgage debt. He does not question the method of valuation here adopted, i. e. evidence heard in open Court. Indeed, he could hardly raise such point as *his own valuation* was accepted by the Court and included in its Findings (Tr. 55). Further, on Pages 3 and 11 of his Supplemental Brief, Appellant concedes that the procedure adopted was strictly in accord with the terms of the Act. He can point to no provision of the statute giving him an absolute right to redeem at the appraised value and thus defeat the express powers of sale granted the Bankruptcy Court.

On the subject of the basis and reason for the sale ordered, Debtor utterly fails to recognize the several contingencies authorizing a sale in the Bankruptcy Court and ignores the Findings of that Court with regard thereto. It is his contention that the sale was ordered solely because of the creditor's request. From a factual standpoint, Appellant's contention is met by Findings 3, 5, 6, 23, 24, 25 and several others incident thereto, specifically made by the Bankruptcy Court (Tr. 54-56) and fully supported by the evidence appearing in the record.

The Act (Sub-sec. (s) Par. 3) not only provides for a sale in that Court upon written request of the secured creditor, but also provides that "If, however, the Debtor at any time *fails to comply with the provisions of this section, or with any orders of the Court* made pursuant to this section, *or is unable to refinance himself within three years,*" (italics ours) the Court may order the property sold, etc.

We are not here concerned with the right of a secured creditor to force a public sale upon written demand

prior to the expiration of the three year moratorium. That question is not involved in this case.

Amended sub-section (s) was enacted August 28, 1935 and Debtor's amended petition thereunder was filed on or about November 1, 1935. The order of sale herein appealed from was entered on February 11, 1939, *more* than three years after the filing of said amended petition. In the interim Debtor retained possession of the property, collected all the income therefrom, paid rent as and when he pleased (in violation of a definite court order), paid no taxes, no interest, nothing on principal, permitted the premises to become in disrepair, *never* made an offer of composition and demonstrated a complete inability of financial rehabilitation within or beyond the three year period. On the date of the order appealed from, Debtor's farm was manifestly within the admitted powers of the Bankruptcy Court to sell—irrespective of any written request or demand by the secured creditor.

The foregoing facts are established in specific Findings of Fact by the Bankruptcy Court, are supported by the record evidence and will not lightly be disregarded by this Court.

Rule 52 (a) Rules of Civil Procedure, U. S. Sup. Ct.

United Shoe Mach. Corp. v. *U. S.*, 258 U. S. 451, 66 L. Ed. 708.

(And other authorities cited in Respondent's Brief in opposition to Petition for Certiorari.)

Consequently, not only did the Bankruptcy Court possess discretionary authority to order a sale for non-compliance by Debtor, but, the three year period having elapsed, the Court's duty to sell upon written request of the secured creditor (having a lien on the property) was clear and the Court had no alternative but to order a

sale. Under the express provision of the statute, Debtor then had "ninety days to redeem any property sold at such sale, *by paying the amount for which any such property was sold,*" with five per cent interest. Let it be remembered that this Debtor made no offer or attempt to redeem per the terms of the statute. He did not even await the proposed sale, but appealed from the order of Court directing same.

This is not a case (as was *Borchard* v. *California Bank, etc., supra*) of a "disorderly and unauthorized procedure" having been followed by the parties. Here there was no failure to apply to the Bankruptcy Court for action in accordance with the statute. On the contrary, such action was applied for and had and the procedure which followed was wholly orderly and was fully authorized by the statute.

In this instance there was (1) written demand by the secured creditor for a sale, (2) failure of debtor to comply with the statute, (3) failure of debtor to comply with orders of Court made pursuant thereto and (4) utter inability to finance himself *after more than three* years from the filing of his petition under the amendment of August 28, 1935. All these elements were established by the evidence and specially found by the Bankruptcy Court. Consequently, even if the latter lacked authority to sell for any one reason, all the other reasons contemplated by and enumerated in the Act were present. It seems idle to question the authority of the Bankruptcy Court in the premises.

To a considerable extent, the foregoing discussion of record facts necessarily involves questions of law incident thereto. These facts present their own best answer. The questions of law, as such injected by Appellant are stated above and require no repetition. In support of these contentions, Appellant cites:

Wright v. *Union Central Life Ins. Co.*, 304 U. S. 502, 82 L. Ed. 1490.

John Hancock, etc. Co. v. Bartels, 308 U. S. 180, 84 L. Ed. 154.
Kalb v. *Feuerstein,* 308 U. S. 433, 84 L. Ed. 281.
Borchard v. *California Bank & Trust Co.,* ..... U. S. ....., 84 L. Ed. 867.

At the outset we desire to register our complete disinclination to question the application of the above-mentioned decisions of this Court under the Frazier-Lemke Amendment *to the particular facts and record herein.*

In *Wright* v. *Union Central, supra,* this Court held that the property involved herein was subject to the exclusive jurisdiction of the Bankruptcy Court. That decision thereby became, was and is the law of this case. Without further question it was accepted by Respondent and the present review is occasioned by such acceptance and results wholly from the subsequent proceedings had in the Bankruptcy Court based thereon. Since the rendition of said decision by this Court, Respondent has not questioned and does not now question the controlling effect thereof. Let there be no misunderstanding on this phase.

In *John Hancock, etc., Co.* v. *Bartels, supra,* it appeared that the Wisconsin County Court attempted to confirm a sheriff's sale (confirmation being essential in that State) and to order the debtor dispossessed of the farm property while his petition was pending in the Bankruptcy Court under the Frazier-Lemke Act. This Court held that no stay order against the State Court proceedings was necessary, the same being automatically stayed by the filing and pendency of the debtor's petition in the Bankruptcy Court. We have never voiced or indicated any quarrel with this opinion and certainly do not do so now. However, it is obvious that same has no application in the instant case. The Debtor here does not seek to review *any State Court* action but only the administration of the farm land *in and by the Bankruptcy Court* as provided in the

statute. No attempt by a State Court to invade or supersede the exclusive jurisdiction of the Federal Court is here involved and the Kalb decision can be of no assistance herein.

Appellant's main reliance, as he says on page 6 of his Supplemental Brief, is *Borchard v. California Bank & Trust Co.*, ... U. S. ....., 84 L. Ed. 867. Appellant asserts that that decision "sustains Debtor's position in this case and rejects the position of the Creditor and condemns the judgment rendered herein." He further states that under the holding therein the sale authorized by the Bankruptcy Court in this case was untimely and improper in that it was permitted "before the period of redemption had expired." We respectfully confess our inability to find support for such conclusion in any expression in the Borchard opinion. As we understand the latter, it does not differ, basically, from the Kalb or Bartels decisions. After the cause had progressed for many months in the Bankruptcy Court, the latter entered an order permitting the secured creditor to proceed by sale *in accordance with the terms of the trust deed, as provided by State statute.* This Court's characterization of the procedure adopted as "disorderly and unauthorized," entirely ignoring the available remedies provided by the Act, was obviously in order. The procedure followed in that case can hardly be compared with that in the instant case wherein the Bankruptcy Court was asked to and did order and control the sale and the complete administration of the farm property. This procedure prevailed immediately from and as a consequence the decision of this Court on the former appeal.

Incidentally, we confess surprise at Appellant's theory that a "period of redemption" can have its inception other than from and after the fact and the date of a sale. Certainly paragraph (3) affords no basis for a departure

from the accepted rule. The redemption there specified relates directly to the property "*sold* at such sale." The redemption amount to be paid relates only to that for which the property "*was* sold."

The Kalb case recognized the propriety of proceedings in the State Court, had with the consent of the Bankruptcy Court. The Borchard opinion clearly enunciated the principle that, as provided by the Act, if its procedure be followed, the conduct of the debtor may necessitate a sale. "Failure of the debtor to comply with any such orders of court may eventuate in a sale." (p. 870, 84 L. Ed. 867.)

The instant case involves no attempt to proceed in the State Court with or without the consent of the Bankruptcy Court and this Court is not called upon to determine the propriety of any such attempt. The Findings of the Bankruptcy Court (supported by all the evidence in the record) clearly demonstrate the eventuality of a sale because of debtor's failure to comply with the Act and with orders of Court entered pursuant thereto in due course of the procedure dictated by the statute, his demonstrated impossibility of financial rehabilitation within three years, to say nothing of the secured creditor's request for a sale, as provided in paragraph (3). Not only was there no inconsistency as against the Kalb and Borchard decisions but complete harmony therewith is apparent.

Congressional Intent.

Appellant's principal argument appears to be addressed to the question of "Congressional Intent", and the duty of this Court with respect thereto. His primary idea is that a debtor has an unqualified right to redeem his property at its determined value, fixed by appraisement or evidence heard in open Court and that this right cannot be

defeated by public sale, whether or not the creditor appears and bids in the property.

The original Frazier-Lemke Amendment was declared unconstitutional and void in *Louisville, etc., Bank* v. *Radford,* 295 U. S. 555, 79 L. Ed. 1593. Among the reasons for this holding was that it had been attempted, without due process of law, to deprive the mortgagee of a substantive property right, the right to realize upon his security by a judicial public sale. When the amendment of August 28, 1935 was enacted, it was expressly and intentionally sought to remedy this defect, among others. Consequently, the provisions of paragraph (3) of sub-section (s) were included in the Act. This was with and for the obvious intent and purpose of saving the constitutionality of the statute.

Beside permitting a public sale in the discretion of the Court for failure of the debtor to comply with the Act or court orders thereunder, it was provided that the secured creditor could, upon written demand, require a sale of the property if not satisfied to accept its then determined value in lieu thereof. This provision was noted and emphasized in *Wright* v. *Vinton, etc., Bank,* 300 U. S. 458, 81 L. Ed. 741, the purpose of its inclusion was stated and the expressions of the House and Senate Committees in support thereof were quoted.

If this Court should now construe the Act by "disregarding" or "casting out" (as Appellant suggests) such provision, it would be more than mere "interpretation"—it would constitute a holding that Congress could not and did not mean what it said deliberately and with avowed intention.

As stated in footnote 9 of the Vinton Branch opinion, "emphasis upon the deliberate intention to meet the constitutional objections" (raised in the Radford case) "dom-

inated the consideration of the bill in all stages. In other words, in the amended sub-section (s), the property is virtually in the complete custody and control of the Court, for all purposes of liquidation."

Sen. Rep. #985, 74th Cong., 1st Sess., p. 5.
79th Cong. Rec. 14332.

In the same category is Appellant's complaint that the right of the creditor (or anyone else) to bid more than the appraised value makes the sale a means of depriving debtor of his alleged right to redeem at the appraised value. In the Vinton Branch case it was also recognized by this Court, with references to the Congressional Debates (including statements by Senator Frazier and Representative Lemke, co-authors of the Act), that in the new Amendment *the "unqualified right" of the secured creditors to bid at the sale was expressly preserved.*

Wright v. *Vinton Branch, etc., supra.*
House Comm. on Jud., 79 Cong. Rec. 14332-3.
Sen. Comm. on Jud., S. 3002, Sec. 6, p. 9.
Sen. Rep. No. 985, 74th Cong., 1st Sess., pp. 4, 6.

Manifestly, Appellant's last mentioned objection must be read in the light of his objection to the authority to sell given the Bankruptcy Court by paragraph (3) of subsection (s). The power to sell involves the duty to obtain the best available price for the property sold. If, as asserted by Debtor, he has an unqualified right to re-acquire the land at its appraised value, not only are the express provisions for sale useless but, even if a sale were had the Court could sell only to the Debtor and only for the estimated then value—regardless of any higher amount offered at the sale. This would nullify the power to sell.

That no such absurd result was intended by Congress is established by the above references to the Congressional Record and is dictated by common sense. Further, para-

graph (3) gives the Debtor the right to redeem from an authorized sale "*by paying the amount for which any such property was sold,*" with 5 per cent interest. Why use this language if Debtor's construction is correct?

Appellant cites a number of authorities in connection with his contention that this Court is bound to disregard anything in the Act which might militate against the primary purpose thereof. Respondent does not question, in the abstract, the rules of construction voiced by these authorities. However, it respectfully submits that none of them supports Appellant's violent assumption that this Court has a right to legislate or to eliminate that which Congress has injected deliberately and for an express purpose. With this assumption we disagree.

Disregard by this Court of safe-guards deliberately provided would not only violate the Congressional intent and purpose but would also subject the present Act to one of the very defects by reason of which the original subsection (s) was declared unconstitutional in the *Radford* case. No citation of authority is necessary to support the established doctrine that, if possible, no interpretation will be adopted which will render a statute unconstitutional.

This is not the case of an ambiguous statute requiring interpretation and a search for Congressional intent to guide that interpretation. The powers and contingencies of sale are clearly stated in paragraph (3).

It is an established principle in this Court that:

> "Where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction."
>
> *United States* v. *Lexington Mill & E. Co.*, 232 U. S. 399, 58 L. Ed. 658.

In *Pirie* v. *Chicago T. & T. Co.*, 182 U. S. 438, 45 L. Ed. 1171, it was said that,

> "When the purpose of a prior law is continued, usually its words are, and an omission of the words implies an omission of the purpose."

To this the Court added that words intentionally omitted are not to be put back in the law "by construction." The same must apply to judicial *exclusion* of words and provisions purposely *included* by the legislature.

If the provisions of which Appellant complains are to be measured by the question of "intent," the answer is clear. It *was* the intent of Congress to include powers and contingencies of public sale in the amended Act. The reasons therefor are equally clear. The purpose of Congress in enacting the entire Section 75, including subsection (s) is not defeated or impaired. Relief to distressed farmers was intended—it was and is effected. The right to retain possession of the farm, to work and live on it and to enjoy an undisturbed breathing spell of three years in which to get back on his feet are still afforded him. In no manner or degree do his statutory obligations or the provisions of paragraph 3 diminish his benefits under this legislation. On the basis of the *Radford* and *Vinton Branch* decisions, they are actually essential to his enjoyment of such benefits. Certainly they inflict no hardship.

Probably Appellant's most violent assumption is the assertion that Congress did not mean what it said and that to give effect to the Act and the primary purpose thereof this Court is bound to "cast out" safe-guards expressly provided by Congress.

Extension of Moratorium.

By the Act of March 4, 1938 (11 U. S. C. A. 203) (s) Congress extended the period to March 4, 1940 within which petitions for relief under Section 75 might be filed

by farmer-debtors. Just before the new period expired, it was again extended so that under the present statute such debtors may file petitions at any time prior to March 4, 1944.

Ever since those enactments Appellant has seriously contended and now contends that thereby his moratorium was extended and must now be observed without interruption until 1944. In addition to his self-made financial holiday of several years, Debtor has enjoyed a statutory moratorium continuously since the filing of his petition under amended subsection (s) on or about November 1, 1935. He now asserts that it has been extended another four years, a total statutory moratorium of nearly ten years.

There is nothing in either the enactments of 1938 or of 1940 to warrant the application of these extensions to petitions theretofore filed or to moratoria then in being. The recognized statutory moratorium period of three years is provided in Section 75(s)(2). Neither said amendment of 1938 or 1940 made any pretense of amending or affecting the designated period. It is still *three* years and *not ten*. We will not here discuss this point further as other observations with regard thereto are contained in our brief in opposition to the Petition for certiorari.

Res Adjudicata.

The second amendment to his answer filed by Debtor (Tr. 50-53) merely urged that the matters set up in Respondent's petition were (or should be considered) adjudicated by this Court on the former appeal (304 U. S. 502) and cannot be raised again. Rather than pass the point entirely without comment, we state briefly our reply to same.

The issues before the Court in the former appeal related almost wholly to the questions of whether or not, as ap-

plied to the case at bar, the Act was constitutional and whether, as against the proceedings had in the State Court, the Bankruptcy Court's jurisdiction was exclusive. At that time the land had not been administered in the Federal Court and the propriety thereof was not and could not be questioned.

The proceeding *now* on appeal is quite the reverse. There is no issue here as to the validity of the Act nor the jurisdiction of the Bankruptcy Court. Both were necessarily invoked by Respondent when it filed the petition asking that the terms of the statute be enforced and the property liquidated thereunder in the Bankruptcy Court.

Largely in connection with his contention in this behalf, Appellant claims that Respondent's averments and showing of the former's failure to make any offer of composition or extension attack the jurisdiction of the Federal Court. It is then urged that such failure is not jurisdictional and that in any event, Respondent has long since waived the point and is now estopped to raise it.

In reply we need only say that Respondent has never believed or contended that the offer required by the statute is an element of jurisdiction. However, when the Bankruptcy Court has acquired jurisdiction by reason of a petition duly filed, the debtor is bound to comply with the requirements of the Act (and orders of Court) to entitle him to the benefits thereof and to avoid a sale under the discretionary powers of the Court. One of these requirements is the making of an offer of composition and extension to his creditors.

In this case Debtor has never made an offer—good faith or otherwise. The evidence so shows and the Bankruptcy Court specifically so found (Finding #3). This was one of the several Findings upon which the Court entered the order of sale.

Conclusion.

We respectfully refer this Court to the Findings of Fact of the Bankruptcy Court (Tr. 54-56) as hereinbefore set out in full and the recitals in the opinion of the United States Circuit Court of Appeals (Tr. 153-7). We believe that same afford a clear and complete picture of the facts before the Bankruptcy Court and the propriety of the procedure therein.

This Brief is more extended than we desire and perhaps contains some repetition in the form of elaboration of certain points contained in our original brief opposing the Petition for Certiorari. However, the granting of the writ incites us to greater detail, as a matter of plain precaution. Also, we are not apprised of the basis of the Court's action, particularly having in mind the denial of writs in the *Lowman* and *Moon* cases wherein, we had thought, the basic issues were largely the same.

It is respectfully submitted that the judgment of the United States Circuit Court of Appeals for the Seventh Circuit be affirmed.

Respectfully submitted,

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